IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7364 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KISHOREKUMAR TULSIDAS GOPALANI

Versus

STATE OF GUJARAT

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Appearance:

MR JAYANT P BHATT for Petitioner

MR SK PATEL, AGP for Respondents

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 09/03/2001

ORAL JUDGEMENT

By means of filing this petition under Articles 226 & 227 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order to set aside order dated June 24, 1986 passed by

the Collector, Gandhinagar District, Gandhinagar, by which auction sale of Plot No.684/1 of Sector-30, Gandhinagar held on December 17, 1985 in favour of the petitioner is set aside. The petitioner has further prayed to set aside order dated April 25, 1988 rendered by the Additional Chief Secretary, Revenue (Appeals), Ahmedabad under section 211 of the Bombay Land Revenue Code by which the above referred to order of the Collector dated June 24, 1986 is confirmed.

2. A public advertisement was published in Gujarati Daily 'Sandesh' informing the members of the public that four residential plots situated in the City of Gandhinagar were to be offered for sale to the public. One of the plots offered for sale was Plot No.684/1 situated in Sector-30 of Gandhinagar City. The said plot admeasures 312 sq.mts. and the upset price fixed was Rs. 330/- per sq.mt. The Mamlatdar (Encroachment) was constituted as Auction Officer. The auction of the plots was conducted on December 17, 1985. The petitioner was interested to purchase Plot No.684/1 and, therefore, he participated in the auction proceedings. The petitioner had offered the highest bid of Rs. 371/- per sq.mt. which was accepted by the auction officer and the petitioner had deposited Rs. 34,000/- being 1/4th price of the total sale consideration of the plot. The remaining 3/4th price was to be paid after the auction was confirmed by the Collector. After acceptance of bid of the petitioner, the sale proceedings were prepared and other 8 persons who had offered price lower than that offered by the petitioner had also put their signatures on the said proceedings in presence of the auction officer. The sale was subject to confirmation by the Collector and, therefore, the proceedings were sent to the Collector, Gandhinagar for confirmation. Instead of confirming the auction sale, the Collector, Gandhinagar passed an order dated June 24, 1986 informing the petitioner that the price offered by the petitioner was less as compared to that of the other plots situated in Sector-30 of Gandhinagar City and as there was a possibility of collusion between the bidders, the sale had not been confirmed. By the said order, a direction was given to refund Rs. 34,000/- paid by the petitioner without interest. A copy of order dated June 24, 1986 passed by the Collector, Gandhinagar is produced by the petitioner at Annexure-C to the petition. Feeling aggrieved by the said order, the petitioner preferred revision application under section 211 of the Bombay Land Revenue Code before the Government and the Additional Chief Secretary, Revenue (Appeals), Ahmedabad, who heard the revision, has dismissed the same by order dated April

25, 1988 (a copy of which is produced at Annexure-E to the petition) giving rise to present petition.

3. The main grievance of the petitioner is that the Collector while exercising statutory powers under Proviso to Section 179 of the Bombay Land Revenue Code has set aside the auction sale without affording an opportunity of hearing to the petitioner and as the order of the Collector adversely affects the proprietory rights of the petitioner, the impugned orders should be set aside.

4. The petition was placed for admission hearing before the learned Single Judge of this Court on October 27, 1988 and after hearing the learned counsel for the petitioner, following order was passed:

> "Rule to be heard with Special Civil Application No.4699/85, 1252/86 and group. Ad-interim relief in terms of Para-27(C). Direct Service"

The net result of the above quoted order is that the respondents have been restrained from auctioning Plot No.684/1 of Sector-30 of Gandhinagar City and this injunction has continued till date.

5. Though the respondents are duly served, no reply affidavit has been filed by any of them controverting the averments made in the petition.

6. The learned counsel for the petitioner states at the Bar that the controversy raised in the petition is squarely answered by Division Bench judgment of this Court in N.D.Chaudhary v. State of Gujarat and others, 2000(2) G.L.R. 1510 in favour of the petitioner and, therefore, the petition should be accepted. Mr. S.K. Patel, learned counsel for the respondents also after going through the reported judgment, states at the Bar that the controversy raised in the present petition is squarely covered by the Division Bench judgment and, therefore, appropriate orders be passed in the petition.

7. In N.D.Chaudhary's case (supra), while construing section 179 of the Bombay Land Revenue Code, the Division Bench has held as under :

> "A bare reading of the proviso to section 179 of the Code makes it abundantly clear that there is no statutory provision which specifically excludes application of rule of natural justice while exercising powers under the proviso to the said section for setting aside the sale. The

> basic scheme of the proviso is that the Collector may in appropriate case, after recording his reasons in writing, set aside the sale. One of the important ingredients of the principles of natural justice, namely, recording of reasons, is very much incorporated in the proviso to section 179 of the Code. When an important ingredient of the principles of natural justice is statutorily incorporated and when there is no specific exclusion of the principles of natural justice, there is no reason why the maxim of audi alteram partem should not be read into the proviso to section 179 of the Code more particularly when setting aside auction sale adversely affects the proprietary rights of a person in whose favour an auction sale is concluded."

The Division Bench has further held that the contract is governed by a statute, namely, the Bombay Land Revenue Code and what is alleged by the petitioner is that exercise of plenary power by the Collector is arbitrary and contrary to the principles of natural justice and as this is a case of public property by the instrumentalities of the State under the statutory provisions and as the case of the petitioner is that the Collector has acted contrary to the scheme of the Code, a petition under Article 226 of the Constitution is maintainable. It may be stated that while holding that before exercising statutory powers under the proviso to section 179 of the Code, an opportunity of hearing should be afforded to the persons likely to be affected, the Division Bench has reliedp on the judgment of another Division Bench in H.H. Parmar v. Collector, Rajkot and others, 1979(2) G.L.R. 97. Applying the principle enunciated by the Division Bench in N.D.Chaudhary's case (supra) to the facts of present case, I find that the impugned orders are liable to be set aside, as admittedly no opportunity of hearing was afforded by the Collector before setting aside the auction sale.

For the foregoing reasons, the petition succeeds. The order dated June 24, 1986 passed by the Collector, Gandhinagar setting aside the auction sale is quashed and set aside. Similarly, the order dated April 25, 1988 rendered by respondent no.2 under section 211 of the Bombay Land Revenue Code by which the order of the Collector is confirmed, is also set aside and quashed. The matter is remanded to Collector, Gandhinagar for deciding it afresh after affording an opportunity of hearing to the petitioner. As the matter is very old, the Collector is directed to decide the same as early as

possible and preferably within a period of three months from the date of receipt of the writ. Rule is made absolute accordingly, with no order as to costs.

(patel) (J.M.Panchal,J.)